

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WELLINGTON HOMES, INC.,	§
WELLINGTON HOMES, L.L.C.,	§ No. 634, 2005
397PROPERTIES, L.L.C., ALBERT	§
A. VIETRI, TINA MARIE VIETRI,	§
and JOSEPH L. CAPANO, II,	§ Court Below—Superior Court
	§ of the State of Delaware
Defendants Below-	§ in and for New Castle County
Appellants,	§ C.A. No. 99C-09-168
	§
v.	§
	§
STATE OF DELAWARE, ex rel. M.	§
JANE BRADY, Attorney General of	§
the State of Delaware,	§
	§
Plaintiff Below-	§
Appellee.	§
	§

Submitted: January 13, 2006
Decided: February 15, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of February 2006, upon consideration of the appellee's motion to dismiss and the appellants' response thereto, it appears to the Court that:

(1) The defendants-appellants, Wellington Homes, Inc. et al. ("Wellington Homes"), appeal from a judgment based on a December 7, 2004 Superior Court jury verdict, that found Wellington Homes in violation

of certain provisions of the Delaware Consumer Fraud Act and the Delaware Deceptive Trade Practices Act. A motion of the plaintiff-appellee, the State of Delaware (the “State”), for costs and attorney’s fees is pending before the Superior Court.

(2) The State has moved to dismiss Wellington Homes’ appeal on the grounds that the appeal is interlocutory and that Wellington Homes has not complied with Supreme Court Rule 42, which governs appeals from interlocutory orders. In its response, Wellington Homes concedes that a pending motion for attorney’s fees delays the finality of a judgment on the merits, but argues that it was necessary to file the instant appeal “out of an abundance of caution.”

(3) This Court consistently has held that a judgment on the merits is not final until an outstanding related application for an award of attorney’s fees has been decided.¹ In this case, there are pending before the Superior Court not only a motion for attorney’s fees but also at least two other motions as well. Thus, the judgment from which the appeal was taken is interlocutory because it did not finally determine and terminate the cause before the Superior Court.² Moreover, Wellington Homes has failed to

¹ *Lipson v. Lipson*, 799 A.2d 345, 348 (Del. 2001).

² *Julian v. State*, 440 A.2d 990 (Del. 1982).

comply with the requirements of Supreme Court Rule 42 in seeking to appeal from an interlocutory order.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to dismiss the appeal is GRANTED. Wellington Homes' filing fee paid in conjunction with the instant appeal shall be transferred to any later appeal from a final judgment entered by the Superior Court in this matter. The appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice